IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

MFA.No. 297 of 2001(B)

OA.46/2000 of FOREST TRIBUNAL, KOZHIKODE dt.28.12.2000.
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APPELLANTS:
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1. **GOURI, D/O. NARAYANAN NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O.CHALAVARA, OTTAPALAM TALUK.**

2. **VISHNU NAMBOODIRIPAD, S/O. NARAYAN NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O. CHALAVARA, OTTAPALAM TALUK.**

3. **SAVITHRI, D/O.NARAYANAN NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O.CHALAVARA, OTTAPALAM TALUK.**

4. **SANKARA NARAYANAN, S/O. NARAYANAN NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O.CHALAVARA, OTTAPALAM TALUK.**

5. **HARIDAS, S/O. NARAYANA NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O.CHALAVARA, OTTAPALAM TALUK.**

6. **NARAYANAN, S/O. NARAYANAN NAMBOODIRIPAD, KADAMBATTA MANAKKAL, P.O. CHALAVARA , OTTAPALAM TALUK.**

(APPELLANTS REP.BY THEIR POWER OF ATTORNEY, U.SURENDRAN, S/O. NARAYANAN NAIR, RESIDING AT MAYALOK, KARKITANKUNNU P.O., PALAKKAD DISTIRCT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SMT.K.R.DEEPA

tss

M.F.A . NO.297/2001

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE CUSTODIAN OF VESTED FORESTS, CALICUT.**

BY SPL.GOVT.PLEADER SRI.M.P.PRAKASH - R1 & R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.297 of 2001

Dated this the 10th day of August, 2007.

JUDGMENT

The appellants in this case filed an application before the Forest Tribunal, Kozhikode in respect of 45 acres of land in Survey No.9/23A3 of Pottassery-II Village of Mannarkkad Taluk of Palakkad District. The Forest Tribunal found that they have title to the property and the appellants were actually cultivating the land and they were allowed to get exemption and allowed the application.

2. The Government filed an appeal and int hat appeal, the matter was remanded, as there was no clear evidence as to whether the land in dispute was a private forest or not. The remand was made for a specific findings on four questions. They are as follows:

> "(1) Whether the disputed property is a private forest or not.
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> (2) Whether the applicants have title to the plaint schedule property.
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> (3) Whether the applicants are holding the land within the ceiling area, and
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> (4) Whether the applicants are qualified to get exemption under Section 3(2) or 3(3) of the Act."

3. After remand, the tribunal found that the disputed property is a private forest. The appellants themselves produced

Ext.A7 proceedings of the District Collector to show that clear felling was allowed in 1968 and for that, they got sanction from the District Collector under the the Madras Preservation of Private Forests Act, 1949. If it was not a private forest coming under the M.P.P.F. Act, there was no necessity to get such permission. Therefore, they cannot contend that it is not a private forest. With regard to the title to the property, the Forest Tribunal has found that in view of the decree in O.S.No.31/1938, the appellants have got title to the property. The tribunal again found, considering the ceiling provisions that the appellants are entitled to hold 37.93 acres only out of 45 acres. Thereafter, it was found that the appellants are not entitled for exemption under Section 3(2) or 3(3) of the act. The appellants filed an appeal before this court as M.F.A.No.101/90. With regard to the title to the property, this court observed as follows:

> **"With respect to tile to the property Tribunal correctly found that the appellants have got title to the property. The Tribunal relief on the final decree proceedings in original suit No.31 of 1938 of Ottappalam Sub Court, schedule attached to the decree and various other documents produced. Therefore, the finding of the tribunal that the appellants have got title to the property is also confirmed."**

4. With regard to the issue regarding title, it was also held as follows:

> **"With regard to the third issue regarding ceiling area, considering the ceiling provisions the Tribunal had correctly found in paragraph 12 of the order that appellants are entitled to hold 37.93 acres only out of 45 acres. With respect to that finding also we see no ground to interfere and that finding is also upheld."**

5. With regard to the question of claiming exemption under Section 3(3), the matter was remanded as the land is otherwise vested under Section 3(1) of the Act as on the relevant date. This court remanded the matter with the following observation:

> **"Even though mere desire without any evidence is not enough for claiming exemption under Section 3(3), appellants had obtained sanction from the District Collector for clear felling the land in question with cashew cultivation. There is no case for the Department that** Ext**.A7 was manipulated or** Ext**.A7 is not genuine. In this connection we refer to the Division Bench decision of this Court in M.F.A.Nos.407 and 408 of 1978 wherein this Court held as follows:**
>
> > **"... Even if the lands involved in these cases were private forests not developed and cultivated as on 10.5.1971 under Section 3(3) of Kerala Act 26 of 1971 the appellants can retain so much extent which together with the other lands they have does not exceed the ceiling applicable to them under Section 82 of the Kerala Land Reforms Act, I of 1964. This aspect also is not seen considered by the Tribunal. ..."**

> **The tribunal did not consider specifically whether appellants are entitled to get exemption under Section 3 (3) of the Act. Why the commissioner's report was not accepted is also not mentioned by the Tribunal. With respect to personal cultivation, the Commissioner sent by the Tribunal after remand also shows that all the adjacent lands were cultivated and well developed lands. The Commissioner's report was accepted only with respect to 95 cents of land and others were not looked into."**

6. Therefore, what is remanded is only for the purpose of finding out whether there was intention to do cultivation. Other matters have become final. With regard to Annexure A4 plot, there is no dispute. It was a cultivated plot. With regard to Ext.A1 covered in the plaint scheduled property, the Tribunal, after remand, referring to the Commissioner's report, found that with regard to Ext.A4 plot there was already cultivation. But, there was no cultivation at the time of inspection by the Commissioner in Ext.A1 property and therefore, the dispute is only with regard to Ext.A1 property. Regarding Ext.A1 property, the Tribunal observed in paragraphs 20 and 21 as follows:

> **"As everyone knows preparation of a forest area for cultivation is a herculean task. Trees has to be felled, roots has to be removed, land has to be levelled. The respondents have no explanation with regard to the existence of kayyalas on the western side of plot A and through the middle of plot A. Kayyalas indicates human interference. Kayyalas are made to level and cultivate**

the land. From the existence of the mud mounds seen in the souther portion of the O.A. Schedule property, the kayyalas and the ridges I am of opinion that the applicant was holding the land with the intention to cultivate the same, from the time they filed application for Ext.A7 and till the commissioner visited the property.

The law with regard to the intention to cultivate was laid down by the Hon'ble High Court in State of Kerala vs. Ayisha and others {2000(2) KLJ 328}. In this case PW.1 gave evidence that if the land is restored to the applicants they intend to cultivate the same. From the evidence available at site and from Ext.A7, C2 and C3 the only conclusion possible is that the applicants were holding the land with the intention to cultivate the same. When the law laid down in the decision cited above is applied it has to be found that the applicants established that they were holding the schedule property with the intention to cultivate."

7. Therefore, the Tribunal found that there was intention to cultivate Ext.A1 property. In view of the earlier remand order, the only question that has to be looked into by the Tribunal was whether there was intention to cultivate Ext.A1 property and the tribunal found that there was intention to cultivate.

Learned Government Pleader pointed that even though the Government is aggrieved, they have not filed an appeal and therefore they are entitled to question the finding with regard to the remanded question. Ext.A7 is the proceedings of the District Collector, Palakkad on 7.10.1968 allowing clear feeling of the trees for the

purpose of cashew plantations. It shows that the application was filed on 8.3.1968 for clear felling and cultivation. The Tahsildar on 22.7.1968 and the Divisional Forest Officer gave a report dated 22.6.1968 and after considering the same, the permission for clear felling was given and cashew trees were allowed to be cultivated. It is the case of the appellants that even though the then existing forest trees were cut and kayyalas were constructed and cashew trees were planted by them, plants were destroyed by the forest officials and that is why on the date of inspection, the existence of kayyalas etc. were found. Ext.A7 proceedings itself show that there is intention to cultivate. In this connection, we also refer to the decision of the Apex Court in ***Joseph v. State of Kerala*** **{2007(3) K.L.T. 144},** wherein it is held that if there is title to the property and part of the property is already cultivated, there is strong presumption and inference that there was intention to cultivate the entire property. Here, the tribunal found that there was evidence to cultivate the entire property, which is clear from Ext.A7 proceedings followed by the construction of Kayyalas. The tribunal rejected the application stating that after the earlier decree there was no registration. Hence, title is validly proved. Question of title is already a concluded matter by the earlier judgments after the final remand order, the only matter the tribunal was entitled to consider was whether there was intention to cultivate the property so as to claim

exemption under Section 3(3) of the Act. The question was decided in favour of the appellant. Therefore, the application ought to have been allowed in respect of 37.93 acres, which was found to be within the ceiling area.

Hence, the order of the Forest Tribunal is set aside to the above extent and the appeal and O.A. are allowed to the above extent.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.297 of 2001 B

JUDGMENT

10TH AUGUST, 2007.